REMARKS

Claims 1, 2, 4 – 9, and 11 – 14 are pending in this application.

In a Final Office Action mailed 11 September 2007, the Examiner rejected claims 1, 2, 4 – 9, and 11 – 14 under 35 USC 103(a) as being unpatentable over Wilson et al. (US Patent No. 6,714,976 B1, hereinafter "the Wilson Patent"). The Examiner noted with respect to the independent claims:

> Wilson discloses:
> software application selection means, , responsive to user input, for identifying a software application that is executing on said processor (It is inherent in order for the controller 216 to identify which software application is running for monitoring. Even if it is not inherent, it could have been obvious to one of ordinary skill in the art to identify which software application for monitoring in order to diagnose the failure ones.);
> polling means for bypassing said Reporting Application Interface, (Wilson bypasses Reporting Application Interface by using the controller 216) and periodically polling said presently executing function in said identified software application to retrieve statistics data indicative of operation of said presently executing function in said identified software application (see at least col. 9, lines 14-18 "A controller 216 which interacts with the clients 212a-212n and the servers 214a-214n to monitor distributed applications running (operating) on the various client and server system. Controller 216 reads (retrieves) and writes to a data repository 220"); and
> data repository means for storing data indicative of an identity of said presently executing function and said retrieved statistics data in a memory (see at least col. 9, line 18 "… writes to a data repository 220).
> Wilson does not explicitly disclose:
> function identification means for automatically determining which function is presently executing in said identified software application.
> However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to recognize that a software application may have many function interacting with each other to perform a task. One would have been motivated to identify which function in a software application gets executing often in order to diagnose the software application.

Applicant has reviewed the cited Wilson Patent and has amended the independent claims to properly distinguish Applicant's invention from the teachings of the Wilson Patent. In particular, the Wilson Patent describes the state of the art in monitoring and diagnosing systems in column 2, line 6 – column 3, line 6, noting that the prior art either continuously polls the monitored system and generates too much data or uses a custom API which overly filters the data. In response to these limitations in the prior art, the system of the Wilson Patent does not gather data on the present operation of the monitored system and only responds to a trigger event to gather data for monitoring and diagnostic

purposes then ceases to gather data. As noted in the Wilson Patent in column 3, lines 9 – 33:

> In accordance with principles of the invention is a method of monitoring a distributed computer system. Trigger events and associated data to be collected are defined. **The occurrence of one of the trigger events at a client is detected while monitoring a connection between a client and a first server. Client data is collected in accordance with the one trigger event at the client. A controller is notified of the detecting of the occurrence of the one trigger event.** The first server is notified of the occurrence of the trigger event. First server data is gathered by the first server, and the first server data is sent to the controller.
>
> In accordance with anther {*sic*} [another] aspect of the invention is a system for monitoring a distributed computer system. Machine executable code defines trigger events and associated data to be collected. Machine executable code detects occurrence of one of the trigger events at a client while monitoring a connection between a client and a first server. Machine executable code collects client data in accordance with the one trigger event at the client. Machine executable code notifies a controller of the detecting of the occurrence of the one trigger event. Machine executable code notifies the first server of the occurrence of the trigger event. Machine executable code gathers first server data by the first server, and machine executable code send s the first server data to the controller. [emphasis added]

Thus, the Wilson Patent is an error reporting system, not a monitoring system since it is solely oriented to a trigger-based paradigm, where client data is gathered only once the trigger event is detected and there is no data collection about the operation of the monitored system absent the trigger event.

In contrast, Applicant's system for monitoring operation of a software application bypasses the proprietary Reporting Application Interface to periodically poll the executing software application to perform a time-wise snapshot of the executing software application to thereby limit the amount of data generated, yet provide a more comprehensive view of the executing software application than an error reporting system as in the Wilson Patent. Applicant's polling system periodically checks the software application to determine which function is presently executing within the software application. The periodic polling of executing processes significantly reduces the amount of data collected, yet enables the application stakeholder to obtain a granularity of data relating to the executing software application not available with existing software monitoring systems. The function polling system monitors all the functions embodied in the software application rather than selected functions to thereby avoid gaps in the coverage of the monitoring.

Thus, Applicant's system continuously monitors the running software application and identifies which function in this software application is presently executing at every polling increment of time.

<u>This process therefore produces a</u> **continuum of data**, by creating periodic snapshots of the present operation of the software and its executing functions, so the user can view the history of the software application, even if there are no failures or trigger events. By periodically polling, Applicant's system avoids the enormous data creation of the prior art processes (which trace all of the statistics generated by executing software applications), yet tracks the continuous operation of the software application and its presently executing functions.

Applicant has amended independent claims 1 and 8 in order to clarify the claim language. In particular, Applicant's claimed system recites the following structure in claim 1:

> function identification means for automatically determining which function is presently executing in said identified software application;

The Examiner agrees that the Wilson Patent fails to show or suggest this structure, and the Examiner addresses this failure to teach Applicant's claimed structure by deeming it to be obvious: "to recognize that a software application may have many function interacting with each other to perform a task. One would have been motivated to identify which function in a software application gets executing often in order to diagnose the software application." However, there is not only no support in the Wilson Patent for the Examiner's assertion but this <u>contradicts all of the teachings of the Wilson Patent, which is solely trigger event driven</u>. (**Client data is collected in accordance with the one trigger event at the client.** - Column 2, lines 13-14) Therefore, the Wilson Patent fails to show or suggest Applicant's claimed "function identification means" and the Wilson Patent teaches away from this concept, since it only collects data in response to an event trigger and does not continuously collect data on the presently executing functions in the software application. Thus, one of ordinary skill in the art would certainly not be motivated to implement this continual monitoring function, since it is inconsistent with the teachings of the error reporting system of the Wilson Patent and could not be integrated into the system of the Wilson Patent, since it is incompatible with that error reporting system.

In contrast to the trigger event driven system of the Wilson Patent, Applicant's claimed system periodically polls the presently executing function within the identified software application to create a continuum of data to enable the user to view the continuing operation of the monitored system, as is recited in claim 1 as:

> polling means for bypassing said Reporting Application Interface and

> periodically polling said presently executing function in said identified software
> application to retrieve statistics data indicative of operation of said presently executing
> function in said identified software application;

As noted above, the error reporting system of the Wilson Patent fails to periodically poll "said presently executing function in said identified software application." The Examiner asserts that Wilson teaches "A controller 216 which interacts with the clients 212a-212n and the servers 214a-214n to monitor distributed applications running (operating) on the various client and server system" but this quote is irrelevant, since it fails to address the fundamental issue of Applicant's continuous periodic polling vs the error reporting, trigger event driven data collection of the Wilson Patent. The Wilson Patent describes its data gathering technique as

> In accordance with principles of the invention is a method of monitoring a
> distributed computer system. Trigger events and associated data to be collected are
> defined. **The occurrence of one of the trigger events at a client is detected while
> monitoring a connection between a client and a first server. Client data is
> collected in accordance with the one trigger event at the client. A controller is
> notified of the detecting of the occurrence of the one trigger event.** The first
> server is notified of the occurrence of the trigger event. First server data is gathered by
> the first server, and the first server data is sent to the controller. (Column 3, lines 9-19)

This fundamental difference between Applicant's system and that of the Wilson Patent is that Applicant's system tracks which functions are presently executing in the software application to create a history of operation of the monitored system, while the system of the Wilson Patent only collects data when a failure occurs and has no record of the operation of the system prior to the occurrence of the trigger event or subsequent to the trigger event.

The MPEP and courts have stated that to support a rejection of claims under 35 U.S.C. §103, the prior art relied upon by the Examiner must disclose all of the following:

> 1.) A motivation or suggestion to combine references; 2.) A reasonable expectation of
> success from combining the references; and 3.) The combined references teach all of the
> limitations of the claimed invention. MPEP §706.02(j); See also In re Vaeck, 20
> USPQ2d 1438 (Fed. Cir. 1991).

If any of these requirements are not met, the combination of the references does not establish a prima facie showing of obviousness for the claimed invention. In reviewing the above arguments, Applicant believes that the Examiner has not met any of the requirements of this test and Appellant respectfully submits that the 35 U.S.C. §103(a) rejections of claims 1, 2, 4 – 9, and 11 – 14 set forth in

the Final Office Action dated 11 September 2007 fail to set forth a prima facie showing of obviousness

because:

> (1)   the Examiner has failed to cite and apply references which contain all of the
> claimed elements or limitations of Applicant's claimed invention,
> (2)   the suggestion to combine the teachings of the Wilson Patent and the
> Examiner's assertion fails to have a reasonable expectation of success since such a
> combination is inoperable, and
> (3)   the Examiner has not shown where the prior art, the nature of the problem to
> be solved, or the knowledge of those skilled in the art provide any motivation or
> suggestion to combine elements in the prior art relied upon by the Examiner to render
> the claimed invention obvious, and instead has relied upon an assertion to combine
> elements not in the prior art, which combination contradicts the teachings of the cited
> Wilson Patent.

Therefore, Applicant believes that claim 1 is allowable under 35 USC 103(a) over the cited

Wilson Patent, because the Wilson Patent fails to show or suggest the following structure recited in this

claim:

> function identification means for automatically determining which function is
> presently executing in said identified software application;
> polling means for bypassing said Reporting Application Interface and
> periodically polling said presently executing function in said identified software
> application to retrieve statistics data indicative of operation of said presently executing
> function in said identified software application; and

Applicant also believes that independent claim 8 is also allowable under 35 USC 102(e) over the cited

Wilson Patent, since it is analogous to independent claim in scope and content and is allowable for the

reasons noted with respect to claim 1. In addition, Applicant believes that claims 2, 4 – 7, 9, and 11 –

14 are also allowable under 35 USC 103(a) over the cited Wilson Patent, because these claims depend

on allowable base claims.

The Examiner also rejected claims 2, 4 -7, 9, and 11 -14 under 35 USC 103(a) as being

unpatentable over Wilson in view of U.S. Patent No. 7,143,392 B2 issued to Li. Applicant believes that

claims 4, 5, 11, and 12 are allowable under 35 USC 103(a) over the cited Wilson and Li Patents since

these claims depend on allowable base claims.

In summary, Applicant has amended claims 1, 8 and believes that claims 1, 2, 4 – 9, and 11 – 14

are allowable over the cited references.

In view of the above remarks, Applicant believes the pending application is in condition for

allowance. Applicant is requesting a one month extension of time, payable with a credit card with this response. However, if additional fees are due, please charge our Deposit Account No. 50-1848, under Order No. 022058.0101PTUS from which the undersigned is authorized to draw.

Respectfully submitted,
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